

Kamran Fattahi (Cal. Bar 150,343)  
LAW OFFICES OF KAMRAN FATTAHI  
15303 Ventura Boulevard, Suite 1400  
Sherman Oaks, California 91403  
Tel: (818) 205-0140  
Fax: (818) 205-0145  
E-mail: Kamran@FattahiLaw.com

Attorneys for Plaintiff  
American Impex Corp.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

AMERICAN IMPEX CORP., d/b/a  
ACE FABRICS & TRIMS,

Plaintiff,

v.

INTERNATIONAL ACE TEX, INC.;  
PAYMAN MALEKAN; ETHAN  
MALEKAN; SEON MALEKAN; and  
DOES 1 through 10, inclusive,

Defendants.

Civil Case No. CV09-7082 PA (Ex)

**[PROPOSED] ORDER RE  
PRELIMINARY INJUNCTION**

Date: November 9, 2009

Time: 1:30 p.m.

Place: Courtroom 15  
(Hon. Percy Anderson)  
312 N. Spring St.  
Los Angeles, CA 90012

The Court has fully considered Plaintiff's "Motion for Preliminary Injunction," filed on October 19, 2009, as well as the papers filed in support and in opposition, other pleadings of record, and arguments presented on behalf of Plaintiff and Defendants. **Good cause appearing therefor, the Court finds as follows:**

1. Plaintiff American Impex Corp. ("AIC") and Ace Textile, Inc. ("Ace Textile") were previously parties to an action before this Court, captioned as "American Impex Corp., d/b/a Ace Fabrics & Trims v. Ace Textile, Inc.; Civil Case No. CV-08-01948 PA (Ex)" (hereinafter "the Original Action").

2. The Original Action primarily involved AIC's claims of trademark infringement and related unfair competition claims against Ace Textile resulting from the latter's usage of the ACE and ACE TEXTILE trademarks and trade names

1 in marketing and selling textiles and fabrics in violation of AIC's trademark and  
 2 trade identity rights in its federally registered marks ACE and ACE FABRICS &  
 3 TRIMS (i.e., U.S. Registration No. 3,472,010 for the mark ACE, and U.S.  
 4 Registration No. 3,472,011 for the mark ACE FABRICS & TRIMS).

5 3. AIC and Ace Textile settled the Original Action by entering into a  
 6 Settlement Agreement having an Effective Date of February 17, 2009 ("Settlement  
 7 Agreement").

8 4. As a result of the Settlement Agreement, on February 20, 2009, this  
 9 Court entered an "Order Dismissing Action With Prejudice," which ended the  
 10 Original Action between AIC and Ace Textile. This Court retained exclusive  
 11 jurisdiction over any action or motion relating to the breach or enforcement of the  
 12 Settlement Agreement.

13 5. As part of the Settlement Agreement (§ 3), Ace Textile agreed and  
 14 acknowledged that the aforementioned federal registrations are exclusively owned  
 15 by AIC, and are valid and fully enforceable.

16 6. Pursuant to § 1 of the Settlement Agreement, Ace Textile agreed that  
 17 by June 17, 2009, it would stop using the terms 'ACE' or 'ACE TEXTILE' in any  
 18 and all manners of use whatsoever, including but not limited to use of these terms as  
 19 part of its corporate name, trade name, as part of a trademark or service mark, in  
 20 marketing, advertising, selling, or distributing of goods or services in the field of  
 21 textiles or fabrics, and in telephone listings, websites or e-mail addresses, store  
 22 signage, invoicing, packaging and shipping related to the same.

23 7. Pursuant to § 2 of the Settlement Agreement, Ace Textile also agreed  
 24 that by June 17, 2009, it would adopt and use the terms "International Acetex"  
 25 and/or "International Acetex, Inc." (hereinafter collectively the "New Name") as its  
 26 corporate name, trade name, trademark or service mark, in marketing, advertising,  
 27 selling, or distributing of goods or services in the field of textiles or fabrics, and in  
 28 telephone listings, websites or e-mail addresses, store signage, invoicing, packaging

1 and shipping related to the same. Ace Textile had agreed that in adopting and using  
 2 the New Name, the term "Acetex" would appear as a single word without any  
 3 separation between its letters; the word "International" would always appear before  
 4 the term "Acetex"; all the letters comprising the New Name would appear either as  
 5 upper case or as lower case letters; all the letters comprising the New Name would  
 6 be in the same size, color, font, and styling; and the New Name would not appear or  
 7 be used in a way that would highlight or give attention to the word "Ace" (by way  
 8 of example, while "ACETEX", or "Acetex", or "acetex" may be used, Ace Textile  
 9 shall not use "AceTex" or "Ace-Tex" or "Ace-tex" or "Ace/Tex" or "Ace/tex").

10 8. Paragraph 5.c. of the Settlement Agreement provided a two-month  
 11 "Notice and Cure" provision in the event of an "honest mistake" by Ace Textile in  
 12 breaching the Settlement Agreement during a period of two (2) months immediately  
 13 after Ace Textile was required to have met its obligations (i.e., between June 17,  
 14 2009 and August 17, 2009). But, the same paragraph stated that the "Notice and  
 15 Cure" provision would not apply to any breach of the Agreement by Ace Textile  
 16 that may occur after August 17, 2009.

17 9. Pursuant to ¶ 5.a. of the Settlement Agreement, it was expressly  
 18 acknowledged by the Parties that a breach any of the terms of the Settlement  
 19 Agreement by the breaching party would cause injury to the non-breaching party as  
 20 U.S. federal law and the laws of the State of California recognize as immediate and  
 21 irreparable, and that preliminary and permanent injunctive relief would be  
 22 appropriate.

23 10. Paragraph 5.b. of the Settlement Agreement allows for liquidated  
 24 damages in favor of Plaintiff AIC by stating as follows: "*It is hereby expressly*  
 25 *acknowledged by the Parties that in the event that Ace Textile breaches any of the*  
 26 *terms of this Agreement, in addition to other legal and injunctive relief, as*  
 27 *liquidated damages for each instance of breach, AIC shall be entitled to recover*  
 28 *and collect the sum of \$25,000 (twenty five thousand dollars) solely from Ace*

1 *Textile, Inc., or from International Acetex, Inc. after the corporate name change*  
 2 *has taken place, or from their successors and assigns."*

3 11. Paragraph 5.e. of the Settlement Agreement provides a "prevailing  
 4 party attorney's fees" provision in any action relating to the breach or for  
 5 enforcement of the Settlement Agreement.

6 12. Paragraph 6.b. of the Settlement Agreement provides a "Successors  
 7 and Assigns" provision as follows: *"This Agreement shall extend to, inure to the*  
 8 *benefit of, and be binding upon the Parties hereto and their respective directors,*  
 9 *officers (including without limitation the individuals Ethan Malekan and Seon*  
 10 *Malekan who are currently officers of Ace Textile, Inc.), shareholders, partners,*  
 11 *proprietors, agents, servants, employees, representatives, affiliates, parents,*  
 12 *subsidiaries, predecessors, and permitted successors and assigns."*

13 13. Pursuant to ¶ 6.b. of the Settlement Agreement, its terms are binding  
 14 upon individual defendants Payman Malekan, Ethan Malekan, and Seon Malekan.

15 14. Defendants Payman Malekan, Ethan Malekan, and Seon Malekan are  
 16 hereinafter individually and collectively referred to as the **Malekan defendants**,  
 17 and defendant IATI and the Malekan defendants are together collectively referred to  
 18 as **"Defendants,"** unless otherwise noted or is made reasonably clear from the  
 19 context.

20 15. In or about May 2009, Ace Textile filed certain papers with the  
 21 Secretary of the State of California and changed its corporate name from "Ace  
 22 Textile, Inc." to "International Ace Tex, Inc."

23 16. The adoption and use of defendant IATI's new corporate name –  
 24 "International Ace Tex, Inc." – is in direct violation and breach of ¶ 2 of the  
 25 Settlement Agreement, because the term "Ace Tex" is spelled as two separate  
 26 words, not one word as "Acetex" as required by the Settlement Agreement. In  
 27 addition, IATI's use of its new corporate name either as "International Ace Tex,  
 28 Inc." or as "International AceTex, Inc." violates ¶ 2 of the Settlement Agreement,

1 because it causes the term “Ace” to be impermissibly highlighted.

2 17. After June 17, 2009, and even after August 17, 2009, Defendants have  
3 continued to use the term ACE TEXTILE as part of their trade name, trademark  
4 and/or service mark – including but not limited to use on store signage, invoices,  
5 and/or telephone listings – to market, distribute, and sell textiles and other related  
6 goods.

7 18. The continued usage of the term ACE TEXTILE by Defendants  
8 beyond June 17, 2009 and beyond August 17, 2009 is in direct violation and a  
9 material breach of ¶ 1 of the Settlement Agreement.

10 19. Because Defendants’ breaches of the Settlement Agreement between  
11 June 17, 2009 and August 17, 2009 were not due to an “honest mistake,” under  
12 ¶5.c. of the Settlement Agreement, AIC was not required to provide any notice of  
13 the same to Defendants.

14 20. The “Notice and Cure” provision in ¶5.c. of the Settlement Agreement  
15 does not apply to Defendants’ breaches of the Settlement Agreement that occurred  
16 after August 17, 2009.

17 21. Plaintiff AIC has not authorized or otherwise excused Defendants’  
18 breach of the Settlement Agreement.

19 22. Plaintiff has been and continues to be damaged and injured by  
20 Defendants’ breach of the Settlement Agreement, and such damages are immediate  
21 and irreparable, and that temporary, preliminary and permanent injunctive relief in  
22 favor of Plaintiff is appropriate. In addition, Defendants expressly acknowledged the  
23 same in ¶ 5.a. of the Settlement Agreement in the event of a breach thereof.

24 **ACCORDINGLY, IT IS HEREBY ORDERED AS FOLLOWS:**

25 Plaintiff AIC’s Motion for Preliminary Injunction is granted, and Plaintiff AIC  
26 is provided with the following preliminary injunctive relief:  
27  
28

1           1. Pending a trial of this action or further order of this Court, Defendants  
 2 International Ace Tex, Inc., Payman Malekan, Ethan Malekan, and Seon Malekan,  
 3 individually and collectively, their officers, owners, agents, servants, employees,  
 4 representatives, related entities, predecessors, successors, and assigns, and all  
 5 persons, entities, or corporations in active concert and participation with any of  
 6 them, are required to:

7           A. Fully and immediately comply with the terms set forth in ¶ 1 of  
 8 the Settlement Agreement between Plaintiff AIC and “Ace  
 9 Textile, Inc.” having an effective date of February 17, 2009,  
 10 namely: stop using either of the terms “Ace” or “Ace Textile” –  
 11 alone or in combination with other term(s) or designs or logos –  
 12 in any and all formats and manners of use whatsoever, including  
 13 but not limited to use of these terms as part of its corporate  
 14 name, trade name, as part of a trademark or service mark, in  
 15 marketing, advertising, selling, or distributing of goods or  
 16 services in the field of textiles or fabrics, and in telephone  
 17 listings, websites or e-mail addresses, store signage, invoicing,  
 18 packaging and shipping related to the same. However, the  
 19 requirements of this paragraph are subject to the provisions in  
 20 paragraph “B” below, which allow Defendants to begin using  
 21 the term “ACETEX” as specifically set forth in that paragraph.

22           B. Fully and immediately comply with the terms set forth in ¶ 2 of  
 23 the Settlement Agreement between Plaintiff AIC and “Ace  
 24 Textile, Inc.” having an effective date of February 17, 2009,  
 25 namely: adopt and use the terms “International Acetex” and/or  
 26 “International Acetex, Inc.” (hereinafter collectively the “New  
 27 Name”) as its corporate name, trade name, trademark or service  
 28 mark, in marketing, advertising, selling, or distributing of goods



1 or services in the field of textiles or fabrics, and in telephone  
 2 listings, websites or e-mail addresses, store signage, invoicing,  
 3 packaging and shipping related to the same. As for the  
 4 corporation "Ace Textile, Inc.," and its change of name to  
 5 "International Acetex, Inc.," such change shall be done under  
 6 the same corporate charter. In adopting and using the New  
 7 Name, the term "Acetex" shall appear as a single word without  
 8 any separation between its letters; the word "International" shall  
 9 always appear before the term "Acetex"; all the letters  
 10 comprising the New Name shall appear either as upper case or  
 11 as lower case letters; all the letters comprising the New Name  
 12 shall be in the same size, color, font, and styling; and the New  
 13 Name shall not appear or be used in a way that would highlight  
 14 or give attention to the word "Ace" (by way of example, while  
 15 "ACETEX", or "Acetex", or "acetex" may be used, Ace Textile  
 16 shall not use "AceTex" or "Ace-Tex" or "Ace-tex" or  
 17 "Ace/Tex" or "Ace/tex").

18 C. Stop using any other word, term, design, logo, symbol,  
 19 trademark, trade name, or designation on or in connection with  
 20 the advertising, marketing, selling, offering for sale, or  
 21 distributing in the United States any textile or home furnishing  
 22 products – as well as any related goods/services – wherein such  
 23 other word, term, design, mark, logo, symbol, trademark, trade  
 24 name, or designation is likely to cause confusion with Plaintiff's  
 25 "ACE" or "ACE FABRICS & TRIMS" marks and trade names,  
 26 or is likely to cause confusion, mistake, or deception as to the  
 27 source, origin, affiliation, or sponsorship of the goods or services  
 28 of Plaintiff.

1 D. File with the Court and serve upon counsel for Plaintiff – within  
2 \_\_\_\_\_ days after the effective date of this  
3 Order Re Preliminary Injunction – affidavits under penalty of  
4 perjury to confirm Defendants’ compliance with the terms of this  
5 Order.  
6

7 2. This Order Re Preliminary Injunction is effective upon Plaintiff’s filing  
8 with the Court a notice indicating that its has posted a bond as undertaking security  
9 in the amount of \$\_\_\_\_\_, and service of such notice on counsel of record  
10 for Defendants.  
11

12 IT IS SO ORDERED.  
13

14 Dated: \_\_\_\_\_  
15 Percy Anderson  
16 United States District Judge  
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LAW OFFICES OF KAMRAN FATAHI  
Sherman Oaks Galleria  
15303 Ventura Blvd., Suite 1400  
Sherman Oaks, CA 91403  
Tel (818) 205-0140 ; Fax (818) 205-0145



1 PROOF OF SERVICE

2 As attorney of record for Plaintiff American Impex Corp. (d/b/a Ace Fabrics &  
3 Trims) in Civil Action No. CV09-7082 PA (Ex), I hereby certify that I caused the  
4 documents listed below to be served on the date indicated below on all parties to this  
5 action via the delivery method indicated and addressed to:

6 Via E-mail (per stipulation by Larry F. Gitlin to accept service by e-mail)

7 Larry F. Gitlin, Esq.  
8 RAPKIN, GITLIN & BEAUMONT  
21650 Oxnard St., Suite 1620  
9 Woodland Hills, CA 91367-4620  
E-mail: LGitlin@rgblawyers.com

10  
11 Document(s) Served

- 12 - Plaintiff's Notice of Motion and Motion for Preliminary Injunction.  
13 - Memorandum of Points and Authorities In Support of Plaintiff's Motion  
14 for Preliminary Injunction.  
15 - [Proposed] Order Re Preliminary Injunction

16  
17 Dated: October 19, 2009

/s/ Kamran Fattahi  
Kamran Fattahi  
18 LAW OFFICES OF KAMRAN FATTAHI  
Attorneys for Plaintiff,  
19 American Impex Corp. (d/b/a Ace Fabrics & Trims)